

# LANCASTER COUNTY

COUNTY - CITY BUILDING Telephone: (402)441-7410  
LINCOLN, NEBRASKA 68508 FAX : (402)441-6513  
*BOARD OF COMMISSIONERS*

**IT IS THE VENDOR'S RESPONSIBILITY TO CHECK  
FOR ADDENDUMS PRIOR TO SUBMITTING PROPOSALS**

## **NOTICE TO BIDDERS SPECIFICATION NO. 06-273**

Lancaster County, Nebraska intends to enter into a contract and invites you to submit a sealed bid for:

### **SUPPLY AND INSTALL CARPET FOR COMMUNITY MENTAL HEALTH**

**A pre-bid and walk through has been scheduled for Friday, September 22, 2006 at 1:00 p.m. at 2201 S. 17<sup>th</sup>. No other times for walk through will be scheduled.**

Sealed bids will be received by Lancaster County, Nebraska on or before **12:00 noon Wednesday, October 11, 2006**, in the office of the Purchasing Agent, Suite 200, K Street Complex, Southwest Wing, 440 South 8th Street, Lincoln, Nebraska 68508. Bids will be publicly opened and read at the K Street Complex.

Bids may be downloaded from the City's website at [www.lincoln.ne.gov](http://www.lincoln.ne.gov) Keyword: Bid. Prospective submitters must monitor the bid listing for any addendums.

Bidders should take caution if U.S. mail or mail delivery services are used for the submission of bids. Mailing should be made in sufficient time for bids to arrive in the Purchasing Division, prior to the time and date specified above. Late bids will not be considered. **Fax or e-mail bids are not acceptable. Bid response must be in a sealed envelope.**

#### **COMMISSIONERS**

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*DEB SCHORR \* LARRY HUDKINS \* RAY STEVENS \* BERNIE HEIER \* BOB WORKMAN  
KERRY EAGAN, Chief Administrative Officer*

**PROPOSAL  
SPECIFICATION NO. 06-273**

**BID OPENING TIME: 12:00 NOON  
DATE: October 11, 2006**

The undersigned bidder, having full knowledge of the requirements of Lancaster County for the below listed items and the contract documents (which include Notice to Bidders, Instructions to Bidders, this Proposal, Specifications, Contract, and any and all addenda) and all other conditions of the Proposal, agrees to enter into a contract for the below listed items for the performance of this Specification, complete in every respect, in strict accordance with the contract documents at and for unit prices listed below.

**ADDENDA RECEIPT:** The receipt of addenda to the specifications numbers \_\_\_ through \_\_\_ are hereby acknowledged. Failure of any bidder to receive any addendum or interpretation of the specifications shall not relieve the bidder from obligations specified in the bid request. All addenda shall become part of the final contract document.

**BIDDING SCHEDULE**

<u>ITEM</u>	<u>ITEM DESCRIPTION</u>	<u>ESTIMATED TO BE</u>	<u>PRICE UNIT</u>	<u>TOTAL</u>
1.	Furnish, deliver and install Carpet at 2201 S. 17 <sup>th</sup> , Community Mental Health Mfg. _____ No. _____	1,500 sq. yds	\$ _____	\$ _____
2.	Alternate, Furnish, deliver and install Carpet Tiles at 2201 S. 17 <sup>th</sup> , Community Mental Health Mfg. _____ No. _____	1,500 sq. yds	\$ _____	\$ _____

**5% BID SECURITY IS REQUIRED**

The undersigned signatory for the bidder represents and warrants that he has full and complete authority to submit this proposal to the City, and to enter into a contract if this proposal is accepted.

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**RETURN 2 COMPLETE COPIES OF PROPOSAL AND SUPPORTING MATERIAL.  
MARK OUTSIDE OF BID ENVELOPE: SEALED BID FOR SPEC. 06-273**

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**COMPANY NAME**

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**BY (Signature)**

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**STREET ADDRESS or P.O. BOX**

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**(Print Name)**

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**CITY, STATE      ZIP CODE**

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**(Title)**

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**TELEPHONE**

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**(Date)**

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**E-MAIL ADDRESS**

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**ESTIMATED COMPLETION DAYS**

Bids may be inspected in the Purchasing Division during normal business hours, **after** tabulation and reviewed by a Purchasing Agent. Bid tabulations can be viewed on our website at: [lincoln.ne.gov](http://lincoln.ne.gov) Keyword: BID.

The Intent to Award will be listed on the website when a recommendation is received from the Department.

**Specification**  
**Carpet - 1<sup>st</sup> Floor - Community Mental Health**  
**2201 South 17<sup>th</sup> St., Lincoln, NE**

**1 SCOPE OF WORK**

- 1.1 The scope of work includes furnish, deliver, remove existing carpet and base, all floor preparation and installation of new carpet and contractor supplied cove base at the Mental Health Clinic.
- 1.2 Lancaster County intends to enter into a contract with selected firm to provide and install new carpet per manufacturers specifications in designated areas of the facility.
- 1.3 Proposed work includes the areas of the facility that are not shaded on the drawing.
  - 1.3.1 Drawing is not to scale.
- 1.4 4" Contractor supplied cove base shall be installed by the Successful Contractor in all areas which have existing cove base.
- 1.5 It is estimated total carpet to be 1,500 sq. yds.

**2 SITE INSPECTION**

- 2.1 A site visit is recommended before one submits a bid on this project.
- 2.2 All interested Contractors should attend the pre-bid conference at the facility for measurements (estimate provided on the bidding schedule of total sq. yds.) and inspection of the conditions under which the work will be performed.
  - 2.2.1 Pre-bid conference
    - Date: Friday, September 22, 2006
    - Time: 1:00 PM
    - Location: 2201 South 17<sup>th</sup>, in front of entrance
- 2.3 No adjustments or extra compensation will be made for any condition and/or measurement which the Contractor might have fully informed himself of prior to bidding.

**3 INQUIRIES**

- 3.1 For bidding information contact:
  - Vince M. Mejer, Purchasing Agent
  - City/County Purchasing (402) 441-8314
  - FAX: (402) 441-6513

**4 SUCCESSFUL CONTRACTOR WILL BE RESPONSIBLE FOR:**

- 4.1 The removal and disposal of all old existing floor covering and cove base.
- 4.2 The removal of any glue, staples, nails, tack strips, etc. from old installation and proper surface preparation as per manufacturer's specification for all new floor covering and cove base.
- 4.3 Any high or low areas will be properly leveled to insure a smooth level floor surface for new products.
- 4.4 All phases of the removal and installation process shall be coordinated with Fred Little of the Lancaster County, or his designated representative.
  - 4.4.1 The intent of this scheduling is to provide as little disruption of the daily activity as possible.
  - 4.4.2 Normal facility operation will continue during the removal and installation process.
    - 4.4.2.1 Offices will be made available in blocks of four (4), notice must be given.

**5 SUMMARY**

- 5.1 Project includes Carpet removal, new carpet and accessories for direct glue down instruction.
- 5.2 Approval of alternate or substitute products will be considered only under the terms and conditions as outlined below:
  - 5.2.1 Whenever a particular make of material or trade name is specified herein, it shall be regarded as being indicative of the standards required.

- 5.2.2 Regardless of format of specifications, any product other than those named in Section 12, must proceed as an alternate or substitute.
- 5.2.3 A bidder who proposes to bid on the basis of an alternate or substitute material or system shall submit to the Purchasing Agent, at least ten (10) days prior to the scheduled bid date, the following information
  - 5.2.3.1 Written application on company letterhead for approval of alternate or substitute to include specifications of alternate or substitute carpet on company letterhead and signed by company officer.
  - 5.2.3.2 24" x 24" sample of the proposed alternate with recommended backing technology.
  - 5.2.3.3 A complete sample representation of colors available.
  - 5.2.3.4 Copies of warranties for proposed alternate or substitute.
  - 5.2.3.5 List of minimum of three (3) jobs, one of which must be used for at least five (5) years, where this alternate or substitute is/was used under similar conditions.
  - 5.2.3.6 These jobs shall be located within one hundred (100) miles of the owner's office.
  - 5.2.3.7 Each job shall be available for inspection by the owner's representatives.
  - 5.2.3.8 Consideration will be given to only those alternates or substitutes that are approved prior to scheduled bid opening date.
  - 5.2.3.9 List of approved alternates or substitutes will be issued to all bidders prior to bid opening.
- 5.3 The following publications of the issues listed below, but referred to hereinafter by basic designation, form a part of this specification to the extent as is bound herein:
  - American Society for testing and Materials (ASTM):
    - E648 - Test Method for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source.
    - E 662-02 - Test Method for Specific Optical Density of Smoke Generated by Solid Materials.

## **6 SUBMITTALS**

- 6.1 Layout Drawings: Show layout of carpet installation, at 1/8" scale, indicating locations of seams and all trim: size and location of all fill strips, and location of trim at all exposed edges.
- 6.2 Samples: Submit for verification purposes, 9" x 9" samples of the carpet specified.
  - 6.2.1 Samples shall be accompanied by manufacturer's technical specification for carpet specified using terminology characteristics as listed in this specification.
- 6.3 Maintenance Data: Submit manufacturer's printed maintenance recommendations for the care, cleaning, and maintenance of the carpet, including detailed instructions pertaining to hot water extraction methods.

## **7 QUALITY ASSURANCE**

- 7.1 Flooring Contractor's Qualifications:
  - 7.1.1 Firm with not less than five (5) consecutive years of experience in installation of commercial carpeting of type, quantity and installation methods similar to work of this section.
- 7.2 FLOORING CONTRACTOR SHALL SUBMIT WITH BID PROPOSAL WRITTEN CERTIFICATION FROM CARPET MANUFACTURER, DEMONSTRATING THEIR FIRM AS AN AUTHORIZED DEALER.
- 7.3 Manufacturer's Qualifications: Firm (carpet mill) with not less than five (5) consecutive years of production experience with carpet similar to type specified in this section; whose published product literature clearly indicates general compliance of products with requirements of this section.

- 7.4 Measurement Verification: Dimensions shown on drawings are approximate.
  - 7.4.1 It is the Flooring Contractor's responsibility to verify all dimensions and job site conditions; order sufficient yardage to fully carpet areas as indicated and to fill overage requirements as specified.
  - 7.4.2 No substitutions shall be permitted to make up for any shortage of material in overage or in carpet to be installed.
- 7.5 Flooring Contractor shall totally responsible for the accuracy of his measurements of total yardage, individual floor yardage, and dye lot yardage requirements, extra yardage for pattern match, and roll length requirements; no additional compensation shall be allowed for shortage of materials.
- 7.6 Dye Lots:
  - 7.6.1 All carpet of the same type in continuous areas shall be from the same dye lots.
- 7.7 Owner reserves the right to test carpet at their expense to verify that the delivered carpet is as specified.
  - 7.7.1 If carpet does not meet specifications, manufacturer will reimburse owner the testing expense and the carpet may be rejected.

## **8 PRODUCT DELIVERY, STORAGE & HANDLING**

- 8.1 Deliver carpeting material in original mill protective wrapping with mill register numbers and tags attached.
  - 8.1.1 Maintain wrappers and protective covers in place until carpet is ready for installation. Store inside, in well-ventilated area, protected from weather, moisture and soiling.
- 8.2 Cutting:
  - 8.2.1 Before roll carpet is cut, it shall be inspected for defects, color variations, or shipping damage and be immediately replaced if any of these conditions exist at no additional cost to the Owner.
  - 8.2.2 Carpet shall be rolled out to insure that carpet rolls are from the same dye lot.
- 8.3 **Deliver all required overages and maintenance stock to owner's specified location prior to beginning installation.**

## **9 JOB CONDITIONS**

- 9.1 Environmental Conditions:
  - 9.1.1 Maintain temperatures in space in accordance with carpet or adhesive manufacturer's recommendations, but in no case less than 60 degrees F for 24 hours prior to, during and after installation.
  - 9.1.2 Subfloor temperature should be a minimum 60 degrees F for 24 hours prior to and after installation.

## **10 SEAMING REQUIREMENT**

- 10.1 In addition to the requirements and recommendations of the Carpet Manufacturer, the following criteria shall be adhered to:
  - 10.1.1 Seaming layout shall enable future replacement, especially in large open areas and traffic paths.
  - 10.1.2 Seaming shall run parallel to major traffic flow whenever possible, unless specifically indicated in writing by owner or owner's representative.
  - 10.1.3 No cross seams shall be allowed in drops of 10 feet or less.
  - 10.1.4 Seams shall be inconspicuous to visual inspection.
  - 10.1.5 No seams shall occur perpendicular to doors or entries.
  - 10.1.6 Seams occurring at doors, parallel to doors, shall be centered directly under the closed door.
  - 10.1.7 No carpet pieces less than 12 inches in width shall be used in the work.
  - 10.1.8 All cutting of carpet for telephone and electrical outlets shall be the responsibility of the Flooring Contractor.

## 11 **EXTRA STOCK**

- 11.1 Furnish 1% additional yardage of carpet type required; extra yardage is over and above any overage provided by manufacturer.
- 11.2 Normal manufacturing overage not to exceed 10% for under 1000 yards not to exceed 5% for over 1000 yards.
- 11.3 Deliver to the Owner uncut in clearly marked dust-proof packages **prior to commencement of work**; store where directed.

## 12 **CARPET**

- 12.1 Carpet Type, J & J Commercial - Impulse Style (2345) - Color 8400 Take A Trip
- 12.2 Carpet shall meet the following minimum requirements:

Yarn	100% Nylon: J & J Encore BCF Nylon (with recycled content)
Dye Method	Solution/Yarn Dyed
Surface Texture	Dense Patterned Loop
Patterning Technique	TechnoWeave II
Pattern Repeat	N/A
Gauge	1/10 (3.94 rows/cm)
Tufted Stitches Per Inch	9.5
Yarn Weight	24 oz./sy (814 grams.m2)
Finished Pile Thickness	0.10 inch (2.54mm)(ASTM D-418)
Density	8,640
Weight Density	207,360
Secondary Backing	ActionBac LTP
Special Technologies	ProTex-Fluorochemical
Width	12 ft (3.66m)
Flammability	Class1
Smoke	Less than 450 flaming
Static Generation	Less than 3.0 kv (AATCC-134)
Static Compliance	Compliant For Accessible Routes
Warranties	Lifetime Wear Lifetime Static Lifetime Against Delamination Lifetime Against Tuft Bind Failure (edge ravel, yarn pulls, zippering)

## 13 **WARRANTIES**

- 13.1 Definition of Lifetime: Lifetime is defined as the period from which materials are installed until the date in which the owner removes them from service.
- 13.2 Manufacturer's Lifetime Warranty, non-prorated, against product failure covering all costs including freight, labor, and material for the following:
  - Edge Ravel - wet or dry
  - Back delamination - wet or dry
  - Tuft Bind - no zippering, wet or dry
  - Static protection as stated above
  - Wear - No more than 10% Face Yarn Loss
  - Adhesive failure
- 13.3 Installation Warranty:
  - 13.3.1 Two (2) year Warranty, non-prorated, against any installation related failure covering all costs including freight, labor, and material; co-signed by the flooring contractor and the manufacturer.

### 13.4 Permanent Stain Resistance

13.4.1 Stain resistant properties must be permanent and not removable by commercial cleanings or abrasive wear.

13.4.1.1 Under GSA requirements stain resistant carpets must score no less than 8.0 (10.0 is the best) on the AATCC Red 40 Stain Scale.

13.4.1.2 Test sample must first be exposed to 100 revolutions on the Taber Abrader (1,000-gram weight per H-18 wheel) and then abraded area must be stain tested using AATCC test method 175.

13.4.1.3 Topical stain resistant treatments will not be acceptable. Stain resistant properties must be inherent.

### 13.5 Environmental Attributes-Leed Criteria

13.5.1 Environmental claims by manufacturer must comply with FTC guidelines.

13.5.2 Environmentally Preferred Product - Carpet must have third party certification (such as Scientific Certification Systems) in accordance with Executive Order 13101 as an Environmentally Preferred product (EPP).

13.5.3 Recycled Content: Carpet must contain 20% post-consumer recycled content based on total product weight.

13.5.4 Rapidly Renewable Bio-based Materials: Carpet must contain a minimum 10% bio-based rapidly renewable material based on total product weight.

13.5.5 Carpet Face Yarn: In accordance with Executive Order 13101, carpet face yarn must be third party certified as an Environmentally Preferred Product (EPP).

13.5.6 Low Emitting Materials: Carpet and all installation components including adhesives, sealers, seam welds and seam sealers must meet the *Low Emitting Materials* standards as outlines in U.S. Green Building Council LEED criteria.

13.5.7 Carpets should pass the CRI Green Label Plus Programs in terms of VOC emissions. Adhesives must meet VOC emissions standards per South Coast Air Quality Management District Rule #1168.

13.5.8 End of Life Reclamation: Carpet must have an existing methodology actively in place to achieve landfill diversion.

## 14 **ACCESSORIES**

14.1 Adhesives: Waterproof, non flammable carpet adhesive recommended and approved by carpet manufacturer in writing for compatibility with carpet backing.

14.1.1 All floor sealers, seam sealers, and adhesives shall contain no calculated solvents per OSHA Regulation 29 CFRE 1910.1200, have no calculated VOC's, be non-flammable, and meet the criteria of the CRI Green Label Plus Certification Program.

14.1.2 MSDS and samples required on product used.

14.2 Miscellaneous Materials: As recommended and approved in writing by manufacturer of carpet, and selected by Flooring Contractor to meet project circumstance and requirements.

14.3 Protection Paper: Fortifiber Corporation "Seekure 892", or approved heavy. Reinforced, non-staining kraft laminated paper.

## 15 **CARPET REMOVAL**

15.1 Remove and dispose of all existing carpet and materials to make sub-floor acceptable for installation.

15.2 Disposal of the carpet is the contractor's responsibility

## 16 **INSTALLATION, GENERAL**

16.1 Comply with manufacturer's instructions and recommendations for installation of this type of carpet by the direct glue down method.

- 16.2 Prepare the subfloor to insure a successful installation.
  - 16.2.1 Utilize a floor sealer such as Lees Everseal where needed or recommended by manufacturer.
- 16.3 Carpeting shall be installed with pile lying in the same direction (monolithic).
  - 16.3.1 Cut carpet evenly and accurately to fit neatly at walls, columns, and projections.
  - 16.3.2 Extend carpet under open-bottomed and raised-bottom obstructions, and under removable flanges of obstructions.
- 16.4 Installed carpet shall be free from ripples, ravel, puckers and raw exposed edges.
  - 16.4.1 All loop pile carpets will demonstrate some fuzzy edges due to normal manufacturing conditions.
  - 16.4.2 It is the contractor's responsibility to trim all edges to eliminate fuzzy seams.
- 16.5 Expansion Joints: Do not bridge building expansion joints with continuous carpeting, provide for movement.

## **17 CLEANING AND PROTECTION**

- 17.1 Remove and dispose of debris and unusable scraps.
- 17.2 Remove spots in accordance with carpet manufacturer's guidelines and replace carpet where spots cannot be removed.
  - 17.2.1 Remove any protruding face yarn using sharp scissors.
  - 17.2.2 Be certain to trim any loose yarns or fibers at all seams.
- 17.3 Maintenance Materials: Deliver usable scraps to Owners' designated storage space, properly packaged and identified.
  - 17.3.1 Usable scraps are defined to include roll ends of less than nine (9) feet in length and pieces of more than two (2) feet wide.
  - 17.3.2 Dispose of smaller pieces as construction waste.

## **18 ALTERNATE**

- 18.1 As an alternate to broadloom, submit a bid for installation of Impulse Modular Carpet Squares, 24" x 24".
  - 18.1.1 This will meet all specifications and conditions outlined for broadloom installation.

## **19 CARPET SPECIFICATIONS**

- 19.1 The estimated quantity of carpet required is 1,500 square yards.
  - 19.1.1 Bidders/Contractors/Supplier shall be responsible for verifying these measurements.
- 19.2 Carpet shall be as specified in Section 12 of this specification.
- 19.3 Supplier shall provide a written lifetime guarantee of installation from final acceptance.
  - 19.3.1 Supplier will provide any service required to correct material problems at no charge.
  - 19.3.2 This guarantee shall be in addition to the regular guarantee of the carpet manufacturer certifying samples submitted and materials supplied, meet or exceed this specification.
- 19.4 It is the intent to purchase a carpet of a type and quality that will last a life under heavy use.
  - 19.4.1 Provide a copy of the manufacturer's standard warranty on the product you are proposing.
  - 19.4.2 Warranty and durability will be a consideration in the award of this order.

## **20 COVE BASE FOR AREA**

- 20.1 Contractor supplied cove base shall be a 4" Rubber/Vinyl Cove Base.
  - 20.1.1 Color of base will be existing color.
  - 20.1.2 Old cove base and adhesive shall be removed and disposed of; then, new cove base shall be installed over all areas of new vinyl and/or tile or carpet.
- 20.2 Installation shall meet all manufacturer's recommended guidelines utilizing approved adhesive; low VOC.
- 20.3 Contractor to supply and install new vinyl transitional strips at doorways adjacent to new carpet where it meets existing VCT.



**21    INSURANCE REQUIREMENTS**

- 21.1 A valid insurance certificate naming "Lancaster County as named additional insured for the project" will be required prior to installations services.
- 21.2 See attached "Insurance Requirements for all County Contracts" for the types and amounts of insurance.
- 21.3 A Lancaster County Contract will be issued after award recommendation.

# **INSTRUCTIONS TO BIDDERS**

## **LANCASTER COUNTY, NEBRASKA PURCHASING DIVISION**

### **1. BIDDING PROCEDURE**

Bidder shall submit two (2) complete sets of the bid documents and all supporting material. All appropriate blanks shall be completed. Any interlineation, alteration or erasure on the specification document shall be initialed by the signer of the bid. Bidder shall not change the proposal form nor make additional stipulations on the specification document. Any amplified or qualifying information shall be on the bidder's letterhead and firmly attached to the specification document.

- 1.2 Bid prices shall be submitted on the Proposal Form included in the bid document.
- 1.3 Bidders may submit a bid on an "all or none" or "lump sum" basis, but should also submit a quotation on an item-by-item basis. Bidding documents shall be clearly marked indicating the kind of proposal being submitted.
- 1.4 Each bid must be legibly printed in ink or by typewriter, include the full name, business address, and telephone number of the bidder; and be signed in ink by the bidder.
- 1.5 A bid by a firm or organization other than a corporation must include the name and address of each member.
- 1.6 A bid by a corporation must be signed in the name of such corporation by a duly authorized official thereof.
- 1.7 Any person signing a bid for a firm, corporation, or other organization must show evidence of his authority so to bind such firm, corporation, or organization.
- 1.8 Bids received after the time and date established for receiving bids will be rejected.

### **2. BIDDER'S SECURITY**

- 2.1 Bid security, as a guarantee of good faith, in the form of a certified check, cashier's check, or bidder's bond, may be required to be submitted with this bid document, as indicated on the Proposal Form.
- 2.2 If alternate bids are submitted, only one bid security will be required, provided the bid security is based on the amount of the highest gross bid.
- 2.3 Such bid security will be returned to the unsuccessful bidders when the award of bid is made.
- 2.4 Bid security will be returned to the successful bidder(s) as follows:
  - 2.4.1 For single order bids with specified quantities: upon the delivery of all equipment or merchandise, and upon final acceptance by the County.
  - 2.4.2 For all other contracts: upon approval by the County of the executed contract and bonds.
- 2.5 County shall have the right to retain the bid security of bidders to whom an award is being considered until either:
  - 2.5.1 A contract has been executed and bonds have been furnished.
  - 2.5.2 The specified time has elapsed so that the bids may be withdrawn.
  - 2.5.3 All bids have been rejected.
- 2.6 Bid security will be forfeited to the County as full liquidated damages, but not as a penalty, for any of the following reasons, as pertains to this specification document:
  - 2.6.1 If the bidder fails to deliver the equipment or merchandise in full compliance with the accepted proposal and specifications.
  - 2.6.2 If the bidder fails or refuses to enter into a contract on forms provided by the County, and/or if the bidder fails to provide sufficient bonds or insurance within the time period as established in this specification document.

### **3. EQUAL OPPORTUNITY**

- 3.1 Each bidder agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age, or marital status.
- 3.2 Successful bidder will be required to comply with the provisions of the County's Affirmative Action Policy (Contract Compliance, Sec. 1.16).
- 3.3 The Equal Opportunity Officer will determine compliance or non-compliance with the County's Affirmative Action Policy upon a complete and substantial review of successful bidder's equal opportunity policies, procedures and practices.

### **4. DATA PRIVACY**

- 4.1 Bidder agrees to abide by all applicable State and Federal laws and regulations concerning the handling and disclosure of private and confidential information concerning individuals and corporations as to inventions, copyrights, patents and patent rights.
- 4.2 The bidder agrees to hold the County harmless from any claims resulting from the bidder's unlawful disclosure or use of private or confidential information.

**5. BIDDER'S REPRESENTATION**

- 5.1 Each bidder by signing and submitting a bid, represents that the bidder has read and understands the specification documents, and the bid has been made in accordance therewith.
- 5.2 Each bidder for services further represents that the bidder is familiar with the local conditions under which the work is to be done and has correlated the observations with the requirements of the bid documents.

**6. INDEPENDENT PRICE DETERMINATION**

- 6.1 By signing and submitting this bid, the bidder certifies that the prices in this bid have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder prior to bid opening directly or indirectly to any other bidder or to any competitor; no attempt has been made, or will be made, by the bidder to induce any person or firm to submit, or not to submit, a bid for the purpose of restricting competition.

**7. CLARIFICATION OF SPECIFICATION DOCUMENTS**

- 7.1 Bidders shall promptly notify the Purchasing Agent of any ambiguity, inconsistency or error which they may discover upon examination of the specification documents.
- 7.2 Bidders desiring clarification or interpretation of the specification documents shall make a written request which must reach the Purchasing Agent at least seven (7) calendar days prior to the date and time for receipt of bids.
- 7.3 Interpretations, corrections and changes made to the specification documents will be made by written addenda.
- 7.4 Oral interpretations or changes to the Specification Documents made in any other manner, will not be binding on the County; and bidders shall not rely upon such interpretations or changes.

**8. ADDENDA**

- 8.1 Addenda are written instruments issued by the County prior to the date for receipt of bids which modify or interpret the specification document by addition, deletion, clarification or correction.
- 8.2 Addenda will be mailed or delivered to all who are known by the County to have received a complete set of specification documents.
- 8.3 Copies of addenda will be made available for inspection at the office of the Purchasing Agent.
- 8.4 No addendum will be issued later than forty-eight (48) hours prior to the date and time for receipt of bids, except an addendum withdrawing the invitation to bid, or an addendum which includes postponement of the bid.
- 8.5 Bidders shall ascertain prior to submitting their bid that they have received all addenda issued, and they shall acknowledge receipt of addenda on the proposal form.

**9. ANTI-LOBBYING PROVISION**

- 9.1 During the period between the bid close date and the contract award, bidders, including their agents and representatives, shall not directly discuss or promote their bid with any member of the County Board or County Staff except in the course of County-sponsored inquiries, briefings, interviews, or presentations, unless requested by the County.

**10. BRAND NAMES**

- 10.1 Wherever in the specifications or proposal form brand names, manufacturer, trade name, or catalog numbers are specified, it is for the purpose of establishing a grade or quality of material only; and the term "or equal" is deemed to follow.
- 10.2 It is the bidder's responsibility to identify any alternate items offered in the bid, and prove to the satisfaction of the County that said item is equal to, or better than, the product specified.
- 10.3 Bids for alternate items shall be stated in the appropriate brand on the proposal form, or if the proposal form does not contain blanks for alternates, bidder MUST attach to the specification documents on Company letterhead a statement identifying the manufacturer and brand name of each proposed alternate, plus a complete description of the alternate items including illustrations, performance test data and any other information necessary for an evaluation. The bidder must indicate any variances by item number from the specification document no matter how slight. Bidder must fully explain the variances from the specification document, since brochure information may not be sufficient.
- 10.4 If variations are not stated in the proposal, it will be assumed that the item being bid fully complies with the County's specifications.

## **11. DEMONSTRATIONS/SAMPLES**

- 11.1 Bidders shall demonstrate the exact item(s) proposed within seven (7) calendar days from receipt of such request from the County.
- 11.2 Such demonstration can be at the County delivery location or a surrounding community.
- 11.3 If bidder does not have an item in the area, it will be at the bidder's expense to send appropriate County personnel to the nearest location to view and inspect proposed item(s).
- 11.4 If items are small and malleable, and the bidder is proposing an alternate product, the bidder MUST supply a sample of the exact item. Samples will be returned at bidder's expense after receipt by the County of acceptable goods. Bidders must indicate how samples are to be returned.

## **12. DELIVERY**

- 12.1 Each bidder shall state on his proposal form the date upon which he can make delivery of all equipment or merchandise. Time required for delivery is hereby made an essential element of the bid.
- 12.2 The County reserves the right to cancel orders, or any part thereof, without obligation, if delivery is not made within the time(s) specified on the proposal form.
- 12.3 All bids shall be based upon **inside** delivery of the equipment or merchandise F.O.B. the County at the location specified by the County, with all transportation charges paid.
- 12.4 At the time of delivery, a designated Lancaster County employee will sign the invoice/packing slip. The signature will only indicate that the order has been received and the items actually delivered agree with the delivery invoice. This signature does not indicate all items met specifications, were received in good condition and/or that there is not possible hidden damage or shortages

## **13. WARRANTIES, GUARANTEES AND MAINTENANCE**

- 13.1 Copies of the following documents must accompany the bid proposal for all items being bid:
  - 13.1.1 Manufacturer's warranties and/or guarantees.
  - 13.1.2 Bidder's maintenance policies and associated costs.
- 13.2 As a minimum requirement of the County, the bidder will guarantee in writing that any defective components discovered within a one (1) year period after the date of acceptance shall be replaced at no expense to the County. Replacement parts of defective components shall be shipped at no cost to the County. Shipping costs for defective parts required to be returned to the bidder shall be paid by the bidder.
- 13.3 Bidder Warrants and represents to the County that all software/firmware/ hardware/equipment /systems developed, distributed, installed or programmed by Bidder pursuant to this Specification and Agreement.
  - 13.3.1 That all date recognition and processing by the software/firmware/hardware/equipment/system will include the four-digit-year format and will correctly recognize and process the date of February 29, and any related data, during Leap years; and
  - 13.3.2 That all date sorting by the software /firmware/hardware/ equipment/system that includes a 1year category® shall be done based on the four-digit-year format. Upon being notified in writing by the County of the failure of any software/ firmware/ hardware /equipment /systems to comply with this Specification and Agreement, Contractor will, within 60 days and at no cost to the County, replace or correct the non-complying software/ firmware/ hardware/ equipment/ systems with software/firmware/ hardware/equipment/systems that does comply with this Specification and Agreement.
  - 13.3.3 No Disclaimers: The warranties and representations set forth in this section 13.3 shall not be subject to any disclaimer or exclusion of warranties or to any limitations of Licensors liability under this Specification and Agreement.

## **14. ACCEPTANCE OF MATERIAL**

- 14.1 All components used in the manufacture or construction of materials, supplies and equipment, and all finished materials, shall be new, the latest make/model, of the best quality, and the highest grade workmanship.
- 14.2 Material delivered under this proposal shall remain the property of the bidder until:
  - 14.2.1 A physical inspection and actual usage of this material is made and found to be acceptable to the County; and
  - 14.2.2 Material is determined to be in full compliance with the specifications and accepted proposal.
- 14.3 In the event the delivered material is found to be defective or does not conform to the specification documents and accepted proposal, then the County reserves the right to cancel the order upon written notice to the bidder and return materials to the bidder at bidder's expense.
- 14.4 Successful bidder shall be required to furnish title to the material, free and clear of all liens and encumbrances, issued in the name of the Lancaster County, Nebraska, as required by the specification documents or purchase orders.
- 14.5 Selling dealer's advertising decals, stickers or other signs shall not be affixed to equipment. Vehicle mud flaps shall be installed blank side out with no advertisements. Manufacturer's standard production forgings, stampings, nameplates and logos are acceptable.

**15. BID EVALUATION AND AWARD**

- 15.1 The signed bid proposal shall be considered an offer on the part of the bidder. Such offer shall be deemed accepted upon issuance by the County of purchase orders, contract award notifications, or other contract documents appropriate to the work.
- 15.2 No bid shall be modified or withdrawn for a period of sixty (60) calendar days after the time and date established for receiving bids, and each bidder so agrees in submitting the bid.
- 15.3 In case of a discrepancy between the unit prices and their extensions, the unit prices shall govern.
- 15.4 The bid will be awarded to the lowest responsive, responsible bidder whose proposal will be most advantageous to the County, and as the County deems will best serve their requirements.
- 15.5 The County reserves the right to accept or reject any or all bids; to request rebids; to award bids item-by-item, by groups, or "lump sum"; to waive irregularities and technicalities in bids; such as shall best serve the requirements and interests of the County.

**16. INDEMNIFICATION**

- 16.1 The bidder shall indemnify and hold harmless, to the fullest extent allowed by law, the County, its agents, officers, employees and representatives from and against all claims, demands, suits, actions, payments, liability, judgements and expenses (including courtordered attorney's fees), arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, civil rights liability, or injury to or destruction of tangible property, including the loss of use resulting therefrom, and that are caused in whole or in part by the bidder, its employees, agents, any subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable. This section will not require the bidder to indemnify or hold harmless the County for any losses, claims, damages and expenses arising out of or resulting from the sole negligence of the County, its agents, employees, or representatives.
- 16.2 In any and all claims against the County or any of its members, officers or employees by an employee of the bidder, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 16.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the bidder or any subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

**17. TERMS OF PAYMENT**

- 17.1 Unless other specification provisions state otherwise, payment in full will be made by the County within thirty (30) calendar days after all labor has been performed and all equipment or other merchandise has been delivered, and all such labor and equipment and other materials have met all contract specifications.

**18. LAWS**

- 18.1 The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this proposal and any agreement reached as a result of this process.

**19. EQUIPMENT TAX ASSESSMENT**

- 19.1 Any bid for public improvement shall comply with Nebraska revised Statute 77-1323 and 77-1324. Indicating; every person, partnership, limited liability company, association or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall sign a certified statement which will accompany the contract , stating that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.

**20. AFFIRMATIVE ACTION**

- 20.1 The City of Lincoln-Lancaster County Purchasing Division provides equal opportunity for all bidders and encourages minority businesses and women-s business enterprises to participate in our bidding process.

**21. CONTRACTUAL AGREEMENT**

- 21.1 County will furnish three (3) copies of the Contract to the successful Bidder who shall prepare attachments as required. Insurance as evidenced by a Certificate of Insurance, surety bonds properly executed, and Agreement signed with the date of signature shall be attached.
- 21.2 The prepared documents shall be delivered to the County within 10 days (unless otherwise noted).
- 21.3 The County will insert the date of signature at the beginning of the Contract Agreement and submit the Agreement to the County Board of Commissioners for approval and signature.
- 21.4 Upon approval and signature from the Board, the County will return one original to the Contractor.

**STANDARD LANGUAGE USED  
FOR ALL COUNTY SERVICE CONTRACTS**

1. Independent Contractor Status. This Agreement is by and between County and Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between County and Contractor. The employees and agents of one party are not the employees or agents of the other party for any purpose whatsoever.
  - 1.1 Contractor understands and agrees that all persons performing work pursuant to this Agreement are, for purposes of worker's compensation liability, solely employees of Contractor and not employees of County. Contractor shall be solely liable and responsible for furnishing any and all workers' compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of Contractor hereunder.
  - 1.2 The employees and agents of each party, shall while on the premises of the other party, comply with all rules and regulations of the premises, including, but not limited to, security and safety requirements.
2. Indemnification. The Contractor shall indemnify and hold harmless the County, its members, its officers and employees from and against all claims, damages, losses, and expenses, including, but not limited to attorney's fees arising out of or resulting from the performance of the contract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property other than goods, materials and equipment furnished under this contract) including the loss of use resulting therefrom; is caused in whole or part by any negligent act or omission of the proposer, any subcontractor, or anyone directly or indirectly employed by any one of them or anyone for whose acts made by any of them may be liable, regardless of whether or not it is caused by a party indemnified hereunder.
  - 2.1 In any and all claims against the County or any of its members, officers or employees by an employee of the proposer, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 14.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the proposer or any subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.
3. Insurance. The Contractor shall maintain during the life of this contract the types and amounts of insurance as specified in the attached "Insurance Requirements for County Contracts (**Exhibit C**)". The County shall be named as additional insured with regard to the performance of the contract services.
4. Governing Laws. The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this agreement.
5. Fulfillment of Obligations. Contractor agrees to fulfill and perform all obligations contained in the contract document which references and incorporates the County Specifications, County Insurance Requirements for all Contracts, Contractor's accepted proposal, any addendums, attachments and clarifications including price and/or services negotiations.

# INSURANCE CLAUSE

## FOR ALL COUNTY CONTRACTS

The Contractor shall indemnify and save harmless, to the fullest extent allowed by law, Lancaster County, Nebraska from and against all losses, claims, damages and expenses, including attorney's fees, arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death or injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

Contractor shall not commence work under this contract until he has obtained all insurance required under this Section and such insurance has been approved by LANCASTER COUNTY, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved.

- A. Workers' Compensation Insurance and Employer's Liability Insurance: The Contractor shall take out and maintain during the life of this contract the applicable statutory Worker's Compensation Insurance, and in the case of any work sublet, the Contractor shall require the subcontractor similarly to provide statutory Worker's Compensation Insurance for the latter's employees. Coverage shall be provided by an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract, and the Contractor shall require each of his subcontractors similarly to maintain Employer's Liability Insurance similarly to the Contractor.

Workers' Compensation - Required limits:

Coverage A - Coverage will include Statutory requirements

Coverage B - Employers Liability

\$100,000 Each Person

\$100,000 Each Person by Disease

\$500,000 Policy Limit - Disease

- B. General Liability Insurance

1. The Contractor shall maintain during the life of this contract, Commercial General Liability Insurance, naming and protecting him and Lancaster County against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage which may arise from operations under this contract whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. The insurance requirements are:

Commercial General Liability (form CG0001 or equivalent) with limits of:

\$1,000,000 Each Occurrence

\$1,000,000 Personal Injury

\$2,000,000 Products/Completed Operations

\$2,000,000 General Aggregate

and:

1. Coverage shall include Contractual Liability coverage insuring the contractual exposure as addressed in this contract.
2. There shall be no exclusion or limitation for the Explosion (X), Collapse (C) and Underground (U) hazards.
3. Coverage shall also include Products/Completed Operations.

4. **Lancaster County shall be named as Additional insured (CG2010 or equivalent).**
  5. The Commercial General Liability coverage shall be endorsed with the Designated Construction Project(s) General Aggregate Limit endorsement (CG 25 03 or equivalent).
- C. Automobile Liability Insurance: The Contractor shall take out and maintain during the life of the contract such Automobile Liability Insurance as shall protect him against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage which may arise from the operations of any owned, hired, or now-owned automobiles used by or for him in any capacity in connection with the carrying out of this contract. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:
- Bodily Injury and Property Damage     1,000,000 Combined Single Limit
- D. Builder's Risk Insurance: **(For Building Construction Contracts Only)** Unless otherwise specified where buildings are to be constructed under this contract, the Contractor shall provide coverage for all direct physical loss (also known as "Special Causes of Loss"). Such insurance shall be written on a Replacement Cost basis covering such building in the amount equal to one-hundred percent (100%) of the contract amount (minimum) as specified herein. Losses, if any, shall be made payable to LANCASTER COUNTY and Contractor as their interest may appear. A certificate of insurance evidencing such insurance coverage shall be filed with LANCASTER COUNTY by the time work on the building begins and such insurance shall be subjected to the approval of LANCASTER COUNTY.
- E. Minimum Scope of Insurance: All Liability Insurance policies shall be written on an "Occurrence" basis only. All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has A.M. Best's Rating of no less than A:VII unless specific approval has been granted by LANCASTER COUNTY.
- F. Certificate of Insurance: All Certificates of Insurance shall be filed with LANCASTER COUNTY on the standard ACCORD CERTIFICATE OF INSURANCE form showing the specific limits of insurance, coverage modifications and endorsements required by the preceding Sections A, B, C, D and showing LANCASTER COUNTY is an additional insured where required. Such certificate shall specifically state that insurance policies are to be endorsed to require the insurer to provide LANCASTER COUNTY thirty days, notice of cancellation non-renewal or any material reduction of insurance coverage.

*The original certificate shall be provided to Lancaster County as designated and a copy to: Office of Risk Management, Lancaster County (555 So. 9<sup>th</sup> Street, Lincoln, NE 68508)*



Original Copies to: Contractor  
County Clerk  
County Agency

## CONTRACT DOCUMENTS

LANCASTER COUNTY

NEBRASKA

Project

Specification #

Company

Address

City, State, Zip

**LANCASTER COUNTY, NEBRASKA  
CONTRACT AGREEMENT**

THIS CONTRACT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2006, by and between \_\_\_\_\_ hereinafter called Contractor, and Lancaster County, Nebraska, a municipal corporation, hereinafter called the County.

WITNESS, that:

WHEREAS, the County has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published an advertisement for and in connection with said Work, to-wit:

Project, Specification #, \_\_\_\_\_; and \_\_\_\_\_

WHEREAS, the Contractor, in response to such advertisement, has submitted to the County, in the manner and at the time specified, a sealed Proposal in accordance with the terms of said advertisement; and

WHEREAS, the County, in the manner prescribed by law has publicly opened, read aloud, examined, and canvassed the Proposals submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in the Contractor's Proposal, a copy thereof being attached to and made a part of this Contract;

**EQUAL EMPLOYMENT OPPORTUNITY:** In connection with the carrying out of this project, the Contractor shall not discriminate against any employee, applicant for employment, or any other person because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the mutual covenants herein contained, the Contractor and the County hereby agree as follows:

The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other construction accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents; and (d) execute construct, and compete all Work included in and covered by the County's award of this Contract to the Contractor, such award being based on the acceptance by the County of the Contractor's Proposal, or part thereof, as follows:

The County agrees to pay to the Contractor for the performance of the Work embraced in this Contract, the Contractor agrees to accept as full compensation therefor, the following sums and prices for all Work covered by and included in the Contract award and designated above, payment thereof to be made in the manner provided by the County:

§



The Work included in this Contract shall begin upon execution by both parties. The work included in this contract shall be substantially completed on or before \_\_\_\_\_, and completed and ready for final payment on or before \_ .

#### GUARANTEE:

A performance bond in the full amount of the contract shall be required for all construction contracts. This bond shall remain in effect during the guarantee period as stated in the specifications. Once the project is completed, the Contractor may submit a maintenance bond in place of the performance bond.

---

The Contract Documents comprise the Contract, and consist of the following:

1. The Instructions to Bidders
2. The Accepted Proposal
3. The Contract Agreements
4. The Specifications
- \*5. The Standard Specifications
  - a. General Conditions
  - b. General Specifications
  - c. Construction & Materials Specifications
- \*\* 6. The Plans (including the Schedule of Approximate Quantities)
7. The Construction Bonds
8. The Special Provisions

\* If project includes paving, water, sewer, sidewalk, lighting or traffic signal work, the Standard Specifications, including the General Conditions, the General Specifications, and the Construction and Materials Specifications will apply, which are on file in the office of the Count Clerk. Copies may be obtained at the Office of the Purchasing Agent.

\*\* The following is an enumeration of the Plans, which are entitled: Project, Spec. #

This Contract Agreement, together with the other Contract Documents herein above mentioned, form this Contract, and the are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and the County hereby agree that all the terms and conditions of this Contract shall by these presents be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and the County do hereby execute this contract.

**EXECUTION BY THE LANCASTER COUNTY, NEBRASKA**

ATTEST:

LANCASTER COUNTY

\_\_\_\_\_  
County Clerk

\_\_\_\_\_  
Chairperson

**EXECUTIONBY CONTRACTOR**

IF A CORPORATION:

ATTEST:

\_\_\_\_\_  
Name of Corporation

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_

Duly Authorized Official

\_\_\_\_\_  
Legal Title of Official

IF OTHER TYPE OF ORGANIZATION:

\_\_\_\_\_  
Name of Organization

\_\_\_\_\_  
Type of Organization

\_\_\_\_\_  
(Address)

By: \_\_\_\_\_

Member

By: \_\_\_\_\_

Member

IF AN INDIVIDUAL:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

#### A. GENERAL INFORMATION

There are two types of construction bonds that are required by statutes for public work in many jurisdictions and are widely used for other projects as well.



Construction Performance Bond  
Construction Payment Bond

The Construction Performance Bond is an instrument that is used to assure the availability of funds to complete the construction.

The Construction Payment Bond is an instrument that is used to assure the availability of sufficient funds to pay for labor, materials and equipment used in the construction. For public work the Construction Payment Bond provides rights of recovery for workers and suppliers similar to their rights under the mechanics lien laws applying to private work.

The objective underlying the re-writing of construction bond forms was to make them more understandable to provide guidance to users. The intention was to define the rights and responsibilities of the parties, without changing the traditional rights and responsibilities that have been decided by the courts. The new bond forms provide helpful guidance regarding time periods for various notices and actions and clarify the extent of available remedies.

The concept of pre-default meeting has been incorporated into the Construction Performance Bond. All of the participants favored early and informal resolution of the problems that may precipitate a default, but some Surety companies were reluctant to participate in pre-default settings absent specific authorization in the bond form.

The responsibilities of the Owner and the options available to the Surety when a default occurs are set forth in the Construction Performance Bond. Procedures for making a claim under the Construction Payment Bond are set forth in the form.

EJCDC recommends the use of two separate bonds rather than a combined form. Normally the amount of each bond is 100 percent of the contract amount. The bonds have different purposes and are separate and distinct obligations of the Surety. The Surety Association reports that the usual practice is to charge a single premium for both bonds and there is no reduction in premium for using a combined form or for issuing one bond without the other.

#### B. COMPLETING THE FORMS

Bonds have important legal consequences; consultation with an attorney and a bond specialist is encouraged with respect to federal, state and local laws applicable to bonds and with respect to completing or modifying the bond forms.

Both bond forms have a similar format and the information to be filled in is ordinarily the same on both bonds. If modification is necessary, the modifications may be different.

The bond forms are prepared for execution by the Contractor and the Surety. Evidence of authority to bind the Surety is usually provided in the form of a power of attorney designating the agent who is authorized to sign on behalf of the Surety. The power of attorney should be filed with the signed bonds.

Each bond must be executed separately since they cover separate and distinct obligations.

Preferably the bond date should be the same date as the contract, but in no case should the bond date precede the date of the contract.

CONSTRUCTION PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Company

Address

City, State, Zip

SURETY (Name and Principal

Place of Business):

Owner (Name and Address):

Lancaster County, Nebraska

555 South 10th St.

Lincoln, NE 68508

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description (Name and Location):

For all labor, material and equipment necessary for Spec. # and Project

BOND

Date (Not earlier than Construction Contract Date):

Amount: \$

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company:

(Corp. Seal)

Company

Address

City, State, Zip

Signature: \_\_\_\_\_

Name and Title:

SURETY

Company:

(Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

CONTRACTOR AS PRINCIPAL

Company:

(Corp. Seal)

Company

Address

City, State, Zip

Signature: \_\_\_\_\_

Name and Title:

SURETY

Company:

(Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

EJCDC NO. 1910-28a (1984 Edition)

Prepared through the joint efforts of The Surety Assoc. of America, Engineers' Joint Contract Documents Committee, The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
  - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default and
  - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Sub-paragraph 3.1; and
  - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract, or
  - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
  - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default, or
  - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
    1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practicable after the amount is determined tender payment therefor to the Owner; or
    2. Deny liability in whole or in part and notify the Owner citing reasons therefor.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
  - 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
  - 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
  - 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
  - 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
  - 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
  - 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

# CONSTRUCTION PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Company  
Address  
City, State, Zip

SURETY (Name and Principal Place  
Of Business):

Owner (Name and Address):

Lancaster County, Nebraska  
555 South 10th St.  
Lincoln, NE 68508

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description (Name and Location):

For all labor, material and equipment necessary for Project and, Specification #

BOND

Date (Not earlier than Construction Contract Date):

Amount: \$

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)  
Company  
Address  
City, State, Zip

Signature: \_\_\_\_\_

Name and Title:

SURETY

Company: (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)  
Company  
Address  
City, State, Zip

Signature: \_\_\_\_\_

Name and Title:

SURETY

Company: (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

EJCDC NO. 1910-28B (1984 Edition)

Prepared through the joint efforts of The Surety Assoc. of America. Engineers' Joint Contract Documents Committee. The Associated General Contractors of America, and the American Institute of Architects.



1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
  - 4.1 Claimants who do not have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof to the Owner, stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim.
  - 4.2 Claimants who do not have a direct contract with the Contractor:
    1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed, and
    2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
    3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
  - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
  - 6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond.
9. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. No suite or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.1 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS
  - 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
  - 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
  - 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY - NAME, ADDRESS AND TELEPHONE)  
AGENT OR BROKER: OWNER'S REPRESENTATIVE (ARCHITECT, ENGINEER OR OTHER PARTY)

**Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323**

*§ 77-1323 Every person, partnership, limited liability company, association, or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall furnish a certified statement to be attached to the contract that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.*

Pursuant to Neb. Rev. Stat. § 77-1323, I, \_\_\_\_\_, do hereby certify that all equipment to be used on City Project/Specification No. \_\_\_\_\_, except that equipment acquired since the assessment date, has been assessed for taxation for the current year, in \_\_\_\_\_ County, Nebraska.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEBRASKA

)

)ss.

COUNTY OF \_\_\_\_\_

)

On \_\_\_\_\_, 2006, before me, the undersigned Notary Public duly commissioned for and qualified in said County, personally came \_\_\_\_\_, to me known to be the identical person, whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

\_\_\_\_\_  
Notary Public

(S E A L)

# Plus Tax Exempt Forms



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## Sample Contract

